



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51 of the Private Housing
(Tenancies)(Scotland) Act 2016**

Chamber Ref: FTS/HPC/EV/24/1429

Re: Property at 38/1F3 Harrison Gardens, Edinburgh, EH11 1SG ("the Property")

Parties:

**Mr Duncan Moody, Number 6, Route Des Voisins,, La Morandie,, Le Lindois, 16310,
France ("the Applicant")**

**Ms Sarah-Jane Duncan, 38/1F3 Harrison Gardens, Edinburgh, EH11 1SG
("the Respondent")**

Tribunal Members:

Gillian Buchanan (Legal Member) and Angus Lamont (Ordinary Member)

Decision

- 1.1 At the Hearing, which took place by telephone conference on 5 June 2025, the Applicant was in attendance with his wife, Mrs Ann Moody, and was represented by Ms Doyle of McEwan Fraser Legal. The Respondent was also in attendance and was represented by Mr Sam Donegan of Community Help & Advice Initiative.
- 1.2 Prior to the Hearing by emails dated 5 February and 21 March 2025 the Applicant's representative lodged additional documents including an Inventory of Productions and a List of Witnesses.
- 1.3 By email dated 22 May 2025 the Respondent's representative also lodged an additional document.

Background

- 2.1 A CMD had previously taken place on 3 February 2025. That CMD was adjourned to the Hearing to allow disputed issues identified between the parties to be determined by the Tribunal.
- 2.2 The Notes of the CMD record that the issues to be resolved between the parties at the Hearing to be:-
 - i. For what reasons does the Applicant wish to sell the Property?
 - ii. Is the Applicant's stated intention to sell the Property genuine?
 - iii. Is it reasonable for the Applicant to seek to sell the Property with vacant possession?
 - iv. What would the effect be on the Applicant of an eviction order being refused?

- v. What health issues affect the Respondent?
- vi. What steps has the Respondent taken to secure alternative accommodation?
- vii. What effect would the granting of an eviction order have on the Respondent?
- viii. Balancing the interests of the Applicant and the Respondent, is it reasonable to issue an eviction order?

The Hearing

- 3.0 At the Hearing the Tribunal heard evidence from the Applicant and his wife, Mrs Ann Moody, who gave evidence together sharing a phone line and from the Respondent.

Evidence of and for the Applicant

- 3.1 In response to question from Ms Doyle, the Applicant and Mrs Moody stated:-
- i. The Property was purchased in 1994. At that time the Applicant was working in Edinburgh and living in the Borders. He was finding it difficult to travel daily and therefore the Property was purchased so he could stay in Edinburgh during the week. He did so for a period of three years and after he retired it was decided to keep the Property and rent it out.
 - ii. The Applicant retired in 1997. The Property was thereafter rented out as an investment. There have been 6 tenants over that period.
 - iii. Mrs Moody stated that after the Applicant retired she continued to work. She retired in 2005 which was when they decided to move to France.
 - iv. The Property was kept as an investment to provide funds when sold on their return to Scotland in order to allow them buy a property here.
 - v. Mrs Moody and the Applicant do not own any other Property than their home in France and the Property.
 - vi. The market value of the Property is believed to be around £250,000 - £270,000. The Applicant and his wife asked Donald Dallas of Warners for a valuation of the Property. His e-mail of 18 October 2022 refers to the value being around £260,000 - £270,000. The Applicant thinks the valuation will still be the same as there are a lot of properties on the market.
 - vii. The property in France is believed to be worth around €250,000 which equates to around £220,000.
 - viii. The Applicant and his wife can only move from France if both of their houses are sold to enable them to buy another property in Edinburgh. Ideally they are looking for a bungalow with two bedrooms, an office and a small garden.
 - ix. Even selling both properties it will still be difficult to find what they're looking for.
 - x. They are hoping to have around £400,000 but are not sure if that will be enough to buy a property in Edinburgh. They are limited by their budget and might need to be more flexible. Ideally they would like to purchase in the Craighleith or Trinity areas but cannot begin to look at properties until the Property is sold.
 - xi. It is not feasible for the Applicant and his wife to live in the Property. The Applicant is already sleeping downstairs as there are internal stairs in their house in France but he can no longer manage them. He has lost his self-confidence. He has fallen down a flight of stairs and is also falling in the garden more often. This is because of his dropped foot and nerve damage in his leg. He has no feeling in his foot. His ankle is constantly swollen and he suffers pain in both his ankle and foot.

- xii. The Applicant agreed that he has significant health problems affecting his mobility and that this influences the type of property he can live in in the future.
- xiii. Mrs Moody stated that they were upset and hurt at the Respondent's suggestion that they didn't intend to sell the Property and were taking revenge action.
- xiv. They met with the Respondent and two representatives of their Letting Agent before she moved in when she raised issues that needed attention and the Applicant and Mrs Moody agreed to a lot of those things. They spent a decent amount of money to bring the Property up to standard. They were quite unhappy with their Letting Agent as they felt they should have checked the Property and had not done so.
- xv. The Respondent's tenancy commenced in January 2022 and they met her at the Property in around April 2022. They had not been at the Property for a number of years and wanted to see for themselves. The Respondent had a representative from Living Rent attend too.
- xvi. The Applicant and his wife had always maintained and updated the Property over the whole period of their ownership.
- xvii. They are not the type of people to take revenge.
- xviii. In response to a question as to whether they gave the Respondent information as to their future intentions regarding the Property Mrs Moody stated that at the April 2022 meeting it was only fair to do so and after COVID, which changed a lot, it was on their minds. They told the Respondent they were giving her "the heads up" and indicated that within one to two years they would sell the Property or live in it themselves.
- xix. The Applicant and Mrs Moody stated that they were aware of the emergency legislation brought in by the Scottish Government during COVID and complied with those requirements. They did not know "all the ins and outs" of these measures as the Property was managed by their Letting Agent.
- xx. With regard to a question as to how they find dealing with their health and the medics in France the Applicant stated that they live in a rural area where there is a shortage of doctors. They have been trying to get a doctor in the nearest village for a couple of years. The hospitals are good but they need to travel there. The language barrier is a problem for the Applicant and there is a lot of complicated paperwork in France. The Applicant said he is 78 years of age and it is getting more difficult for him to deal with all of that. It is a 45 minute drive to the nearest hospital but they are not always sent there. Depending upon the issue they may require to attend the hospital in Bordeaux which is approximately 1.5 hours away.
- xxi. The Applicant said he requires to rely on his wife a lot regarding formal written communications and she sometimes has to attend appointments with him.
- xxii. Mrs Moody said her French is ok but dealing in medical terms is difficult and she does not always pick up nuances in relation to health issues.
- xxiii. The Applicant said his health conditions have been more complex in the last two to three years.
- xxiv. In response to a question about the advantages of moving back to Scotland the Applicant stated that if he stayed in Edinburgh there are shops and transport as his driving days will soon be over as well as hospitals. He still pays his taxes etc and will hopefully be able to get a GP. Edinburgh is very

familiar to the Applicant and his wife. They have relatives in Fife and the Kelso area and the Applicant worked in Edinburgh for 30 years so has friends and a community there. In France the Applicant and his wife feel socially isolated. They have only one permanent neighbour and friends they had made have moved away with another having died due to COVID which is not helping their mental health.

- xxv. If the Applicant is unsuccessful in his application for an eviction order he said that he and his wife are stuck as they cannot afford to move back to Scotland without selling the Property. Their life would continue to become more isolated and due to barrier of language.
- xxvi. With regard to selling the Property with the Respondent in occupation, Mrs Moody said that they had looked at all options and had taken advice from Donald Dallas at Warners. Reference was made to his e-mail of 28 January 2025. He said that, with a sitting tenant, only developers would be interested in purchasing the Property and only at a substantially reduced price which they could not afford. The Applicant will also need to pay Capital Gains Tax on the sale of the Property and therefore selling with the Respondent in occupation is not viable.

3.2 Under cross examination by Mr Donegan the Applicant and Mrs Moody stated:-

- i. They had not seen the condition of the Property in January 2022. They understood from their Letting Agent that the Property was in a suitable condition to let. It was only in April/May 2022 when they met the Respondent at the Property that they learned the Property was not up to standard. Nothing had been mentioned by the Respondent when the lease was signed.
- ii. Mr Donegan asked whether the Applicant was aware of the harm suffered by the Respondent after she moved into the Property. The Applicant and his wife stated that they were only made aware after the issues had been rectified and the Respondent seemed alright when they met with her and was happy with the outcome.
- iii. Mr Donegan asked what steps the Applicant had taken to prepare the Property for sale. The Applicant responded that Warners are their solicitors and they could not proceed further at that time. They were advised not to put the Property on the market for sale until vacant.
- iv. Mr. Donegan asked how the price reduction of £30,000 had been reached with a sitting tenant in occupation. The Applicant stated that it was Donald Dallas' job to advise because he was experienced in the market and they took his advice.
- v. The Applicant said that on the Internet he established the price would be £20,000 to £30,000 less with a sitting tenant.
- vi. With regard to the rent being below market value, the Applicant and his wife stated that there was no reason to increase the rent further and given the tribunal proceedings they elected to leave the rent as it was.
- vii. In relation to the Applicant's health issues, he stated that GP's are more difficult to find. His own GP, who he has attended for 20 years, is coming up for retirement and in rural France there are difficulties recruiting doctors.
- viii. In Scotland the Applicant and his wife will have more social support from family and they are in urgent need of that.

- ix. The Applicant repeated that selling the Property with a sitting tenant was not an option. That would simply be prolonging the position. They want to sell the Property and move on with their lives. They will always get less selling the property with a sitting tenant.
- x. The Applicant and his wife said they were not unsympathetic to the Respondent's situation. They said they were willing to provide references if that would assist her find alternative accommodation.
- xi. With regard to the suggestion that if an eviction order is granted the enforcement of that order could be suspended, the Applicant stated that they cannot wait. The situation has gone on for two years. He said houses don't sell quickly here and the market is going down. It is not reasonable to delay further.

3.3 There was no re-examination by Ms Doyle.

Evidence of the Respondent

3.4 In response to questions from Mr Donegan the Respondent stated:-

- i. Mr Donegan asked the Respondent why she has questioned whether the Applicant's stated intention to sell the Property is genuine. The Respondent explained that when she first received a Notice to Leave in 2022 that was on the back of a complaint that she had made to the Applicant. She therefore took the view that this was a revenge eviction. She said she had tried to reach out to the Applicant. She said she was sorry she had not taken the Notice to Leave seriously until she received the further Notice to Leave last year. She was not aware that the Applicant really wanted to sell. It had been made clear to her that the Property could command double the rent she was paying. The Tribunal asked the Respondent whether, at the Hearing, she accepted the Applicant's intention to sell the Property to be genuine. The Respondent said that the Applicant had given a lot of vague answers and she was still confused as to whether the intention is genuine. She is not persuaded that the intention is genuine.

At this point the [REDACTED] and the Tribunal adjourned for a brief comfort break.

- ii. On resuming Mr Donegan asked what steps the Respondent had taken to find somewhere else to stay. She said she had looked at mid market rental properties whilst in employment and also at private tenancies but rental costs were in excess of £1000. Since being made redundant she has spoken to Shelter, the Homeless Team and Living Rent. EdIndex lists Council and housing association properties for rent and she applies there every week. She also applies for mid market rentals and is making a constant effort to find alternative accommodation. The Respondent said she had been told by the Council that she would be on the waiting list for in excess of five years as the Council has removed all its housing stock from EdIndex. The Respondent said she had also looked outwith the area despite having lived there for in excess of 20 years, being all her adult life.
- iii. The consequences of losing her tenancy of the Property would mean that she is put into temporary housing described to her as a bed and breakfast

room. It is important that she does not make herself homeless. She attends AA groups and Church in the area. She is open to moving out only due to the pressures on her.

- iv. When asked how her well-being has been impacted, the Respondent said [REDACTED] without the security of her home there will be a massive impact on her mental health.
- v. [REDACTED] Because of the amount of homeless people she would likely be in temporary accommodation for a few years.
- vi. The Respondent said she struggles with anxiety and depression but [REDACTED]. She is trying to find something as quickly as she can. Losing her home would set her back years.

3.5 Under cross examination by Ms Doyle:-

- i. Ms Doyle intimated that she was not challenging the Respondent's health but asked whether the Respondent had spent a lifetime dealing with these conditions. The Respondent said yes, and that was why she chose a tenancy of the Property as it had been promised to be a long term tenancy.
- ii. [REDACTED]
- iii. The Respondent was asked whether she was able to access support to assist with her mental health. The Respondent said her GP had referred her [REDACTED]
- iv. The Respondent agreed that she had recently been made redundant and is now in receipt of Universal Credit including the housing element. She has been assessed for the Adult Disability Payment but it will be a few months until she hears further about that. She has been claiming benefits since September 2024.
- v. The Respondent agreed that she had previously been in full-time employment and this was the first time she had been unemployed. She agreed that she had been able to sustain working throughout her adult life. Her work was with a holiday company meeting guests, doing check-ins, arranging contractors and so on. She had worked there for a total of 11 years. Before that she had worked in retail and in bars. She always worked in a social environment.
- vi. With regard to the meeting with the Applicant in April 2022, the Respondent denied that she was specifically told of their intention to sell the Property. A vague statement was made that they might be moving back to the Property within the next year. She had understood that she would be able to live in the Property long term and this was the first time that she heard that this might not be the case. She said she would not have moved into a Property needing so much repair unless she was able

- to stay there long term. She asked when the Applicant and his wife might be moving back to the Property but did not get any certainty.
- vii. The Respondent was asked when she started looking for alternative accommodation. She said she had waited on a response to letters that she had sent to the Applicant and therefore did not start looking until 2023. She had difficulties with addiction at that time and therefore did not make as much progress as she would have liked. In 2024 she has done much more. However, as she has no children she is not regarded as having any priority. She also joined EdIndex at the time. Outwith her present area, she has looked other properties in Leith, Musselburgh, Penicuik and the like. She thought she had viewed maybe 20 properties in total.
 - viii. The Respondent said that Thrive does not help with housing and Living Rent is a union which does not help with housing applications either. She has reached out to charities but they are under a massive amount of strain. The only help she has received is from the Council, housing associations and EdIndex.
 - ix. With regard to priority, she said that until she is without a property, she will not be given any priority. In the private sector, she has shown up to view properties that were a scam being Air BnB type properties where individuals are trying to sell tenancies who have no right to do so. There is a huge amount of fake properties advertised online that appear to be in an affordable range.
 - x. She has always lived in the private sector to date.
 - xi. With regard to medical support for the Respondent she said the NHS do not have much support for mental health. Individuals requiring such support are referred to charities.

3.6 Mr Donegan had no re-examination.

Submissions

4.1 The parties' representatives made the following concluding submissions:-

Submissions for the Applicant

4.2 Miss Doyle said the Respondent challenged the grant of an eviction order on 2 bases namely (i) the ground of eviction and (ii) reasonableness.

- i. With regard to the ground of eviction, the Tribunal had evidence from Warners dated 18 October 2022 and 28 January 2025 both of which confirmed that they have been instructed by the Applicant with regard to the sale of the Property.

The Applicant and his wife had provided sworn statements and had given evidence of the intention and need to sell the Property in order to relocate to Edinburgh. The move to Edinburgh is much needed due to the health of the Applicant in particular and his increasing difficulties where he is currently staying. The suggestion of the Applicant taking revenge on the Respondent is highly upsetting and untrue.

The Applicant and his wife had lived in the Property themselves for two to three years.

The ground of eviction is valid and proved.

- ii. With regard to reasonableness Ms Doyle stated that she appreciated the position to be finely balanced.

The Respondent's health is not in dispute and the Applicant and his wife appreciate the position she is in. However, the Applicant's position is difficult too and in all the circumstances it is reasonable to grant an eviction order.

The Applicant and his wife do not have other options. Their nest egg is the Property which requires to be sold to meet the ongoing needs of their retirement. There has been a level of planning so that when they needed to do so they could move to Edinburgh for the rest of their lives.

Previously, the ground of intention to sell was a mandatory ground. The Applicant and his wife are hostages to changes in policy and have been caught on the hop by the introduction of the test of reasonableness initially in emergency legislation. They are not high-flying people. They have worked all their lives and planned to recoup their investment to finance their own retirement. They cannot work or acquire money in any other way. If they can't sell the Property they cannot move. In contrast, the Respondent, whilst not wishing to minimise her health issues, is much younger, has held full-time jobs throughout her adult life and has shown resilience. She has the potential to progress, her health has improved and whilst Ms Doyle agreed there is a difficult housing market nevertheless in all the circumstances it is reasonable for an eviction order to be granted.

Submissions for the Respondent

- 4.3 Mr Donegan for the Respondent said an eviction order would have a significant impact on the Respondent. It is important that she has a stable tenancy in place. He asked the Tribunal to refuse to grant the eviction order.

If an eviction order is granted he asked the Tribunal to suspend enforcement for a period of six months to allow the Respondent's priority status to improve.

- 4.4 The Tribunal adjourned to consider its decision.

Findings in Fact

- 5.1 The Tribunal made the following findings in fact:-
- i. The Applicant is the heritable proprietor of the Property.
 - ii. The Property was purchased in 1994 to allow the Applicant, who was then working in Edinburgh and living in the Borders, to stay in Edinburgh during the week. He did so for a period of three years.
 - iii. After the Applicant retired he decided to keep the Property and rent it out. The Property has been rented out since then to various tenants.
 - iv. Following the retirement of Mrs Moody in 2005 the Applicant and Mrs Moody decided to move to France where they continue to live.
 - v. The Applicant and Mrs Moody always intended to return to Scotland at some stage.
 - vi. The Property was kept as an investment to provide funds when sold on their return to Scotland in order to allow them buy a property here.
 - vii. Mrs Moody and the Applicant do not own any other Property than their home in France and the Property.

- viii. The market value of the Property is believed to be around £250,000 - £270,000.
- ix. The property in France is believed to be worth around €250,000.
- x. The parties entered into a Private Residential Tenancy ("PRT") relative to the Property that commenced on 7 January 2022. The rent agreed to be payable under the PRT is £750 per calendar month.
- xi. The Applicant and Mrs Moody met the Respondent at the Property in around April 2022 with their respective agents. The Applicant and his wife had not been in the Property for a number of years and relied upon their Letting Agent.
- xii. At that meeting the Applicant and Mrs Moody told the Respondent they that in due course they would sell the Property or move back from France to live in it themselves.
- xiii. The Applicant has significant health problems affecting his mobility which influences the type of property he can live in in the future. His health conditions have been more complex in the last two to three years.
- xiv. The Applicant and Mrs Moody live in a rural area in France. There is a shortage of doctors. It is a 45 minute drive to the nearest hospital but depending upon the issue they may require to attend the hospital in Bordeaux which is approximately 1.5 hours away.
- xv. The language barrier in France is a problem for the Applicant and there is a lot of complicated paperwork in France. The Applicant is 78 years of age and it is getting more difficult for him to deal with all of that.
- xvi. The Applicant and Mrs Moody wish to return from France to live in Edinburgh. They have relatives in Fife and the Kelso area to support them. The Applicant worked in Edinburgh for 30 years so Edinburgh is very familiar to them. They have friends there.
- xvii. In France the Applicant and his wife feel socially isolated. They have only one permanent neighbour.
- xviii. They cannot afford to move back to Edinburgh without selling the Property. Their life would continue to become more isolated.
- xix. It is no longer feasible for the Applicant and his wife to move back to live in the Property. The Applicant can no longer manage the stairs within his home in France. He has fallen down a flight of stairs and is also falling in the garden more often. This is because of his dropped foot and nerve damage in his leg. He has no feeling in his foot. His ankle is constantly swollen and he suffers pain in both his ankle and foot.
- xx. The Applicant and his wife can only move from France if both of their properties are sold to enable them to buy another property in Edinburgh. Ideally they are looking for a bungalow with two bedrooms, an office and a small garden.
- xxi. On 17 November 2023, the Applicant's agent served on the Respondent a Notice to Leave requiring the Respondent remove from the Property by 10 February 2024 on the basis of Ground 1 of Schedule 3 of the Private Housing (Tenancies)(Scotland) Act 2016 ("the 2016 Act").
- xxii. The Notice to Leave was not served nor are these proceedings raised in an act of revenge against the Respondent.
- xxiii. The Applicant has served on City of Edinburgh Council a Notice under Section 11 of the Homelessness etc (Scotland) Act 2003.
- xxiv. The Respondent remains in occupation of the Property.
- xxv. The email communications between the Applicant and Donald Dallas of Warners Solicitors LLP, Edinburgh dated 18 October 2022 and 28 January 2025

are sufficient evidence of the Applicant's intention to sell the Property in terms of sub-paragraph 3 of Ground 1 of Schedule 3 of the 2016 Act.

- xxvi. The Applicant's intention to sell the Property is genuine.
- xxvii. The Applicant has taken advice from Donald Dallas at Warners on the possibility of selling the Property with the Respondent in occupation as a sitting tenant. Mr Dallas advised that only developers would be interested in purchasing the Property and only at a substantially reduced price which the Applicant and Mrs Moody could not afford.
- xxviii. The Applicant will also need to pay Capital Gains Tax on the sale of the Property and therefore selling at a reduced price with the Respondent in occupation is not viable.
- xxix. The Respondent has made significant efforts to find somewhere else to stay in the private and public sectors without success. She has also looked outwith the area of the Property (her preferred area having lived there for around 20 years) for alternative accommodation. Her search is made more difficult by virtue of having no priority.
- xxx. [REDACTED]
- xxxi. [REDACTED]
- xxxii. The Respondent struggles with anxiety and depression [REDACTED]
- xxxiii. The Respondent has spent much of her life dealing with mental health conditions.
- xxxiv. The Respondent has recently been made redundant and is now in receipt of Universal Credit including the housing element. She has been assessed for the Adult Disability Payment which is ongoing. She has been claiming benefits since September 2024.
- xxxv. The Respondent was previously in full-time employment and this was the first time she had been unemployed. The Respondent had been able to work throughout her adult life. She always worked in a social environment.
- xxxvi. Without the security of a permanent home the Respondent's mental health will be adversely impacted [REDACTED]

Reasons for Decision

- 6.1 The Tribunal considered the evidence of the Applicant and his wife to be both credible and reliable. The evidence of the Respondent was also considered to be credible and reliable.
- 6.2 The Application proceeds upon Ground 1 of Schedule 3 of the 2016 Act which states:-
 - "(1) *It is an eviction ground that the landlord intends to sell the let property.*
 - (2) *The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if the landlord—*
 - (a) *is entitled to sell the let property,*
 - (b) *intends to sell it for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it, and*
 - (c) *the Tribunal is satisfied that it is reasonable to issue an eviction order on account of those facts.*

- (3) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2)(b) includes (for example)—*
(a) a letter of engagement from a solicitor or estate agent concerning the sale of the let property,
(b) a recently prepared document that anyone responsible for marketing the let property would be required to possess under section 98 of the Housing (Scotland) Act 2006 were the property already on the market.”

6.3 The Applicant is entitled to sell the Property in terms of sub-paragraph 2(a), being the heritable proprietor thereof. That matter is not in dispute.

6.4 The Tribunal then considered each of the disputed issues for determination.

i. *For what reasons does the Applicant wish to sell the Property?*

The Applicant is elderly. The Applicant's health is deteriorating. There are language barriers and practical difficulties with obtaining medical treatment in France. The Applicant and his wife are increasingly isolated at their rural home in France. They always intended to return to Edinburgh at some stage. They have family in Scotland and a social circle in Edinburgh. The Property was retained as an investment following the Applicant's retirement to be occupied or sold later in life. The Property is no longer suitable for their occupation. They require to purchase a suitable property to live in for the remainder of their lives and require to realise the capital in the Property for that purpose. None of these issues were challenged by the Respondent.

ii. *Is the Applicant's stated intention to sell the Property genuine?*

Sub-paragraph 2(b) of Ground 1 requires that the Applicant intends to sell the Property for market value, or at least put it up for sale, within 3 months of the tenant ceasing to occupy it. Sub-paragraph 3 gives examples of the evidence that might be produced to show the landlord has the intention described in sub-paragraph 2(b). In this instance the Applicant relies upon email communications with Donald Dallas of Warners Solicitors LLP, Edinburgh dated 18 October 2022 and 28 January 2025. In terms of these communications Mr Dallas indicated his firm's willingness to sell the Property once vacated by the Respondent and discussed various issues including the approximate value of the Property, costs of sale and the effect of selling the Property with the Respondent in situ. The Tribunal accepted this evidence to be sufficient to meet sub-paragraph 2(b).

However, the Respondent questions whether the Applicant's intention to sell the Property is genuine. The Tribunal, having heard from the Applicant and Mrs Ann Moody in evidence, is left in absolutely no doubt that their intention to sell the Property is genuine and that there are compelling reasons for them to want to do so all as described at 6.4.i. above. The Tribunal is entirely satisfied that there is no element of revenge relative to the Respondent.

iii. *Is it reasonable for the Applicant to seek to sell the Property with vacant possession?*

This question is best answered under 6.4.viii below.

iv. *What would the effect be on the Applicant of an eviction order being refused?*

If an eviction order was to be refused the Applicant and his wife would find themselves in a very difficult position, potentially stuck in France isolated in a rural location with deteriorating health issues and with accessing health services in France being increasingly difficult. Whilst they could realise the capital in their home in France alone the amount generated would not be sufficient to buy a suitable property in Edinburgh (or even the surrounds) where they wish to live out their retirement close to family and their friends. They own no other properties. They are elderly. The capital invested in the Property was intended for their retirement and would not be available for the Applicant and his wife at all if the Applicant is compelled to retain the Property for lease to the Respondent.

These factual issues were not challenged by the Respondent.

v. *What health issues affect the Respondent?*

The Respondent gave candid evidence about her ongoing mental health issues and these were also outlined in the letter from [REDACTED]

The Respondent's health issues were expressly accepted by the Applicant.

vi. *What steps has the Respondent taken to secure alternative accommodation?*

The Respondent outlined the efforts she had made to secure alternative accommodation starting in 2023 but with more urgency in 2024. She described her search in the mid-market rental market, in the private sector and in the public sector by direct contact with the Homeless Team, housing associations and EdIndex as well as Living Rent. She explained that she had looked outwith her preferred geographical area and had viewed around 20 properties. She indicated she has no priority as matters stand as at the Hearing.

The Respondent's efforts were not challenged by the Applicant.

vii. *What effect would the granting of an eviction order have on the Respondent?*

The Respondent described [REDACTED] and how her health would be significantly affected by being placed into long term temporary accommodation if made homeless again. [REDACTED]

viii. *Balancing the interests of the Applicant and the Respondent, is it reasonable to issue an eviction order?*

The Tribunal requires to be satisfied that it is reasonable to issue an eviction order in terms of sub-paragraph 2(c) of Ground 1. Direction is drawn from the following caselaw on the approach to determining whether or not it is reasonable to grant an eviction order.

In *Manson & Dowie v Turner & Turner* (2003) UT 38 referring to the assessment of reasonableness in the context of a Private Residential Tenancy the Upper Tribunal stated:-

"As noted above, the establishment of the facts specified in sub paragraphs 2(a) and (b) of ground 1 is prima facie sufficient to establish that it is reasonable to issue an eviction order under this ground. Where, as here, both the landlord and the tenant put evidence before the FTS in an attempt to establish other facts relevant to reasonableness, its first task is to assess that evidence and make clear findings of fact in relation to it. Having done so, it must then weigh and balance all the relevant facts found by it which bear on reasonableness. This will include the facts specified in sub paragraphs 2(a) and (b). The intentions of the landlord are therefore clearly relevant, and the FTS is entitled if not bound to consider whether they are reasonable. Furthermore the FTS would be entitled, at least in principle, to find that the landlord's intentions outweighed the matters put in evidence by the tenant. Put another way, the FTS would be entitled in principle to conclude both that the landlord's intentions were subjectively reasonable, and that they made it objectively reasonable to issue an eviction order. The FTS' emphasis in its written reasons on the respondents' intentions is therefore not of itself sufficient to establish that the FTS has departed from the "all the circumstances" approach to which it correctly directed itself. The FTS' errors in this case were in relation to fact finding and in failing to explain why the respondents' interests and intentions outweighed those of the appellants, not its general approach to assessment of reasonableness."

In *Stainthorpe v Carruthers and Swan* (2024) UT 30 in considering the assessment of reasonableness the Upper Tribunal stated:-

"Is it Reasonable to Grant an Order for Possession?"

74. The UTS must establish, consider and properly weigh the "whole of the circumstances in which the application is made" (Barclay v Hannah 1947 S.C. 245 at 249 per Lord Moncrieff) when deciding whether it is reasonable to grant an order for possession.

75. Its decision on reasonableness is not in itself a finding in fact, but instead a concept or conclusion determined by an exercise of judgment (City of Edinburgh Council v Forbes 2002 Hous. L. R. 61, at paragraph 7-16 , per Sheriff Principal Nicholson QC). Its assessment as to whether it is reasonable for the UTS to make an order for possession must take account all relevant circumstances as they exist at the date of the hearing (Cumming v Danson [1942] All ER 653 at 655). It may take into account in assessing reasonableness whether the parties' intentions are subjectively reasonable and it must "objectively balance the rights and interests of both parties" (Manson and Downie v Turner (2003 UT 38 at paragraphs 41 and 42; see also City of Glasgow District Council v Erhaigonoma 1993 S.C.L.R 592).

76. The relevant circumstances on the appellant's side are his legal right to use and dispose of his property as he thinks fit within the constraints of planning and building law, and his subjectively reasonable wish to reconstruct the house for transfer to his stepson for use as a family home. Those on the respondents' side are their long period of occupancy of the house, emotional attachment to it, the age of the second respondent, the reduced state of their health, their difficulties in finding a house to rent of equivalent amenity, the loss of their supportive neighbours, and their

subjectively reasonable wish to live in the house indefinitely.”

The Upper Tribunal further stated:-

"81. Ultimately, the subjectively reasonable intention of the appellant to reconstruct the house and eventually transfer ownership to his stepson to benefit his stepson and his stepson's wife, and the diminution in the standard of living of the respondents if they are required to remove from the house that they enjoy living in, deserve equal consideration. These are therefore countervailing circumstances.

82. Accordingly, I consider the deciding factor to be that the appellant exercises a right of property, whereby he can use or dispose of the house as he thinks fit. I therefore agree with the appellant's submission that those interests must take precedence over the wishes of the respondents to continue in occupation of the property indefinitely.

83. The proper balance between the parties' interests can in my opinion appropriately be struck in this case by postponing the date for possession to allow the respondents time to find alternative accommodation, and the appellant time to complete his plans by instructing the contractor, finalising his financial arrangements and obtaining his building warrant. I have so ordered."

The Tribunal carefully weighed and balanced all the relevant facts found by it which bear on reasonableness.

The Tribunal is satisfied that the Applicant intends to sell the Property as soon as vacant possession is recovered. The Tribunal is satisfied that the Applicant intends to sell the Property (and also to sell the Property owned and occupied by him and his wife in France) in order to release capital to fund the purchase of suitable accommodation in or around Edinburgh in order to allow them to move back to Scotland to see out their lives near to friends and family and with easy access to medical support particularly for the Applicant whose health is in decline. The Applicant is elderly. There are language barriers and practical difficulties with obtaining medical treatment in France. The Applicant and his wife are increasingly isolated at their rural home in France and always intended to return to Edinburgh at some stage. The Property was retained as an investment following the Applicant's retirement to be occupied or sold later in life. The Property is no longer suitable for their occupation.

The Tribunal understood too the Respondent's reasons for wishing to remain in occupation of the Property. She has lived in the area of the Property all of her adult life (around 20 years). She attends AA meetings and Church in that area. She understood the tenancy would be for the long term. More importantly, the Tribunal took into account the health of the Respondent which is fragile but stable for now, and the potential effect on her health of moving to temporary bed and breakfast type accommodation likely for a protracted period if an eviction order is granted.

The Tribunal noted the efforts the Respondent has made and continues to make to find alternative accommodation in the public and private sectors without success as yet. Tenancies in the private sector are unaffordable for the Respondent who is presently in receipt of benefits. Council accommodation is acutely in short supply and the Respondent, as matters stood at the Hearing, has little if any priority status.

Both parties' positions deserve equal consideration. Both parties positions are compelling. However, the Applicant's intention to sell the Property and his reasons for doing so as outlined above are subjectively reasonable and the Applicant's legal right to dispose of the Property for the legitimate purpose of moving back to Edinburgh or the surrounds to allow him to fund the purchase of a suitable property for the remainder of his and his wife's retirement must take precedence over the Respondents' genuine desire to continue in occupation of the Property. The Tribunal concluded that if the Respondent had been able to find alternative accommodation she would have moved from the Property (which she accepted in evidence). The issue is therefore the availability of suitable and affordable alternative accommodation for the Respondent and her current lack of any priority status given the ongoing existence of her tenancy of the Property.

On that basis the Tribunal concludes that it is reasonable to grant an eviction order.

- 6.5 Having reached the decision to grant an eviction order the Tribunal carefully considered whether to delay the execution of the eviction order in terms of Rule 16A(d) of the First-tier Tribunal Housing and Property Chamber Rules of Procedure 2017. The Tribunal concluded that it is reasonable to provide the Respondent with an extended period of time to secure alternative accommodation.

Accordingly, the Tribunal determined that the order cannot be enforced until after 12 noon on 13 October 2025.

The Tribunal hope that the Respondent will be supported in achieving priority status in light of an eviction order being granted and her health background, and that suitable accommodation for her can be secured in the public sector.

Determination

- 7.1 The Tribunal determined that an eviction order should be granted against the Respondents in favour of the Applicant suspended to 12 noon on 13 October 2025.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Gillian Buchanan

12 June 2025

Legal Member/Chair

Date